

1 James R. Condo (#005867)  
2 Kristine L. Gallardo (#033975)  
3 SNELL & WILMER L.L.P.  
4 One Arizona Center  
5 400 E. Van Buren, Suite 1900  
Phoenix, Arizona 85004-2202  
Telephone: (602) 382-6000  
Facsimile: (602) 382-6070  
jcondo@swlaw.com  
kgallardo@swlaw.com

6 Richard B. North, Jr. (admitted *pro hac vice*)  
7 Georgia Bar No. 545599  
8 Matthew B. Lerner (admitted *pro hac vice*)  
9 Georgia Bar No. 446986  
NELSON MULLINS RILEY & SCARBOROUGH LLP  
201 17th Street, NW / Suite 1700  
Atlanta, GA 30363  
Telephone: (404) 322-6000  
Facsimile: (404) 322-6050  
richard.north@nelsonmullins.com  
matthew.lerner@nelsonmullins.com

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13 Attorneys for Defendants  
*C. R. Bard, Inc.* and  
*Bard Peripheral Vascular, Inc.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

17 IN RE: Bard IVC Filters Products Liability  
18 Litigation No. 2:15-MD-02641-DGC

**DEFENDANTS' MOTION FOR  
LEAVE TO FILE UNDER SEAL  
EXHIBITS IN SUPPORT OF  
BARD'S MOTION TO EXCLUDE  
THE OPINIONS OF DEREK  
MUEHRCKE, M.D.**

22 Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively  
23 “Bard”) hereby respectfully move this Court, pursuant to the Stipulated Protective Order  
24 (Doc. 269), Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6 for  
25 leave to file under seal the exhibits attached in support of Bard’s Motion to Exclude the  
26 Opinions of Derek Muehrcke, M.D., served on February 1, 2019. The exhibits to the  
27 Motion contain certain medical information, trade secrets, and confidential information  
28 that are protected under the Stipulated Protective Order, warranting protection from public

1 disclosure. Accordingly, there is good cause to grant Defendants' Motion for Leave to  
 2 File Under Seal the Exhibits in Support of Bard's Motion. Plaintiffs do not oppose this  
 3 Motion. A list of the Exhibits sought to be sealed are attached hereto as Exhibit A.

4 **ARGUMENT AND CITATION OF AUTHORITY**

5 "When a court grants a protective order for information produced during discovery,  
 6 it already has determined that 'good cause' exists to protect this information from being  
 7 disclosed to the public by balancing the needs for discovery against the need for  
 8 confidentiality." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,  
 9 1213 (9th Cir. 2002). *See also, Medicis Pharm. Corp. v. Acella Pharm., LLC*, CV 10-  
 10 1780-PHX-JAT, 2012 WL 2260928 at \*2 (D. Ariz. June 15, 2012) (sealing exhibits  
 11 related to "Medicis' marketing strategy, Acella's product formulation,...various e-mails  
 12 and deposition transcripts, viscosity test data, sales and marketing information, and  
 13 various other documents" because "[m]uch of this information has been previously sealed  
 14 by the Court, has been designated as confidential by the parties pursuant to the protective  
 15 order in this case, or could otherwise potentially harm the parties if released publicly  
 16 because of its confidential and sensitive nature.").

17 The exhibits to Bard's Motion contain and recite pieces of highly competitive,  
 18 confidential, proprietary information that warrant protection under Federal Rule of Civil  
 19 Procedure 26(c)(1)(G) because the documents are not made public by Bard and, if  
 20 obtained by Bard's competitors, could give an unfair economic advantage to those  
 21 competitors. *Blanchard & Co., Inc. v. Barrick Gold Corp.*, No. 02-3721, 2004 WL  
 22 737485, at \*5 (E.D. La. Apr. 5, 2004) (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d  
 23 772, 786 (3d Cir. 1994)). The Exhibits cite and extensively quote dozens of confidential  
 24 Bard documents, including technical and design files, testing documents, internal adverse  
 25 event investigations and analysis, design and risk management documents, and numerous  
 26 internal e-mails between high-level Bard employees. The Reports quote so extensively  
 27 from confidential documents that filing the Reports is akin to filing the documents  
 28 themselves. Except for a small number of publicly available documents, all of the Bard

1 documents cited in the Reports were produced to Plaintiffs as “Confidential – Subject to  
 2 Protective Order” on each page pursuant to Stipulated Protective Order (Doc. 269) ¶ 6.

3 The public disclosure of these exhibits would reveal confidential, proprietary and  
 4 trade secret information and would create a heightened risk of irreparable harm to Bard’s  
 5 competitive business concerns. Further, its inclusion in the public record would not only  
 6 harm Bard because of the trade secrets and confidential information it contains, but it  
 7 would also eviscerate the significant time and resources Bard has expended in protecting  
 8 its business information.

9 Accordingly, good cause exists for sealing the Exhibits at issue.

10 RESPECTFULLY SUBMITTED this 1st day of February, 2019.

11 s/Richard B. North, Jr.

12 Richard B. North, Jr.

13 Georgia Bar No. 545599

14 Matthew B. Lerner

15 Georgia Bar No. 446986

16 NELSON MULLINS RILEY & SCARBOROUGH, LLP

17 Atlantic Station

201 17th Street, NW / Suite 1700

18 Atlanta, GA 30363

19 PH: (404) 322-6000

20 FX: (404) 322-6050

21 richard.north@nelsonmullins.com

22 matthew.lerner@nelsonmullins.com

23 James R. Condo (#005867)

24 Kristine L. Gallardo (#033975)

25 SNELL & WILMER L.L.P.

26 One Arizona Center

27 400 E. Van Buren

28 Phoenix, AZ 85004-2204

PH: (602) 382-6000

FX: (602) 382-6070

JCondo@swlaw.com

KGallardo@swlaw.com

25  
**26 Attorneys for Defendants C. R. Bard, Inc. and**  
**27 Bard Peripheral Vascular, Inc.**

Nelson Mullins Riley & Scarborough

201 17<sup>th</sup> Street NW, Suite 1700

Atlanta, GA 30363

LLP

(404) 322-6000

1                   **EXHIBIT A**

2                   **DOCUMENTS PROPOSED TO BE FILED UNDER SEAL**

3 Defendants request they be permitted to file under seal the following documents:

- 4     1. Exhibit A to motion to exclude Dr. Muehrcke – Expert Report of Drs.  
5       Kinney, Roberts, and Kalva
- 6     2. Exhibit B to motion to exclude Dr. Muehrcke – Expert Report of Dr.  
7       Muehrcke
- 8     3. Exhibit C to motion to exclude Dr. Muehrcke – *Tinlin*-Specific Expert  
9       Report of Dr. Muehrcke
- 10    4. Exhibit D to motion to exclude Dr. Muehrcke – Comparison of Dr.  
11      Muehrcke's Report to Drs. Kinney, Roberts, and Kalva's Report